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DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED-2015-OPE-0103]

Negotiated Rulemaking Committee; Negotiator Nominations and
Schedule of Committee Meetings--Borrower Defenses

AGENCY: Office of Postsecondary Education, Department of
Education.

ACTION: Intent to establish negotiated rulemaking
committee.

SUMMARY: We announce our intention to establish a
negotiated rulemaking committee to prepare proposed
regulations for the Federal Student Aid programs authorized
under title IV of the Higher Education Act of 1965, as
amended (HEA). The committee will include representatives
of organizations or groups with interests that are
significantly affected by the topics proposed for
negotiations. We request nominations for individual
negotiators who represent key stakeholder constituencies
for the issues to be negotiated to serve on the committee,
and we set a schedule for committee meetings.

DATES: We must receive your nominations for negotiators to serve on the committee on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The dates, times, and locations of the committee meetings are set out in the Schedule for Negotiations section in the SUPPLEMENTARY INFORMATION section.

ADDRESSES: Please send your nominations for negotiators to Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8013, Washington, DC 20006. Telephone: (202) 502-7526 or by email: Wendy.Macias@ed.gov.

FOR FURTHER INFORMATION CONTACT: For information about the content of this notice, including information about the negotiated rulemaking process or the nomination submission process, contact: Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8013, Washington, DC 20006. Telephone: (202) 502-7526 or by email: Wendy.Macias@ed.gov.

For information about negotiated rulemaking in general, see The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions at www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS) toll free at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

On August 20, 2015, we published a notice in the Federal Register (80 FR 50588) announcing our intent to establish a negotiated rulemaking committee under section 492 of the HEA to develop proposed regulations for determining which acts or omissions of an institution of higher education ("institution") a borrower may assert as a defense to repayment of a loan made under the William D. Ford Federal Direct Loan (Federal Direct Loan) Program ("borrower defenses") and the consequences of such borrower defenses for borrowers, institutions, and the Secretary. We also announced two public hearings at which interested parties could comment on the topic suggested by the U.S. Department of Education (Department) and suggest additional topics for consideration for action by the negotiated rulemaking committee. Those hearings were held on September 10, 2015, in Washington, DC, and on September 16, 2015, in San Francisco, California. We invited parties to comment and submit topics for consideration in writing as well. Transcripts from the public hearings are available at

www2.ed.gov/policy/highered/reg/hearulemaking/2016/index.html. Written comments submitted in response to the August 20, 2015 notice may be viewed through the Federal eRulemaking Portal at www.regulations.gov. Instructions for finding comments are available on the site under "How to Use Regulations.gov" in the Help section. Individuals can enter docket ID ED-2015-OPE-0103 in the search box to locate the appropriate docket.

Regulatory Issues

After considering the information received at the regional hearings and the written comments, we have decided to establish a negotiating committee to address for loans made under the William D. Ford Federal Direct Loan (Federal Direct Loan) Program: (1) the procedures to be used for a borrower to establish a defense to repayment; (2) the criteria that the Department will use to identify acts or omissions of an institution that constitute defenses to repayment of Federal Direct Loans, including the creation of a Federal standard; (3) the standards and procedures that the Department will use to determine the liability of the institution for amounts based on borrower defenses; (4) the effect of borrower defenses on institutional capability assessments, and (5) other loan discharges. In addition, the committee may also consider if and how these issues

will affect the Federal Family Education Loan (FFEL) Program.

These topics are tentative. Topics may be added or removed as the process continues.

We intend to select negotiators for the committee who represent the interests significantly affected by the topics proposed for negotiations. In so doing, we will follow the requirement in section 492(b)(1) of the HEA that the individuals selected must have demonstrated expertise or experience in the relevant topics proposed for negotiations. We will also select individual negotiators who reflect the diversity among program participants, in accordance with section 492(b)(1) of the HEA. Our goal is to establish a committee that will allow significantly affected parties to be represented while keeping the committee size manageable.

We generally select a primary and alternate negotiator for each constituency represented on the committee. The primary negotiator participates for the purpose of determining consensus. The alternate participates for the purpose of determining consensus in the absence of the primary. Either the primary or the alternate may speak during the negotiations.

The committee may create subgroups on particular topics that may involve individuals who are not members of the committee. Individuals who are not selected as members of the committee will be able to observe the committee meetings, will have access to the individuals representing their constituencies, and may be able to participate in informal working groups on various issues between the meetings.

Constituencies: We have identified the following constituencies as having interests that are significantly affected by the topics proposed for negotiations. The Department plans to seat as negotiators individuals from organizations or groups representing these constituencies:

- Students/borrowers.
- Legal assistance organizations that represent students/borrowers.
- Consumer advocacy organizations.
- Groups representing U.S. military servicemember or veteran Federal loan borrowers.
- Financial aid administrators at postsecondary institutions.
- State attorneys general and other appropriate State officials.

- State higher education executive officers.
- Institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F, and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA.
- Two-year public institutions of higher education.
- Four-year public institutions of higher education.
- Private, nonprofit institutions of higher education.
- Private, for-profit institutions of higher education.
- FFEL Program lenders and loan servicers.
- FFEL Program guaranty agencies and guaranty agency servicers (including collection agencies).

The goal of the committee is to develop proposed regulations that reflect a final consensus of the committee. Consensus means that there is no dissent by any member of the negotiating committee, including the

committee member representing the Department. An individual selected as a negotiator will be expected to represent the interests of his or her organization or group and participate in the negotiations in a manner consistent with the goal of developing proposed regulations on which the committee will reach consensus. If consensus is reached, all members of the organization or group represented by a negotiator are bound by the consensus and are prohibited from commenting negatively on the resulting proposed regulations. The Department will not consider any such negative comments on the proposed regulations that are submitted by members of such an organization or group.

Nominations: Nominations should include:

- The name of the nominee, the organization or group the nominee represents, and a description of the interests that the nominee represents.
- Evidence of the nominee's expertise or experience in the topics proposed for negotiations.
- Evidence of support from individuals or groups within the constituency that the nominee will represent.
- The nominee's commitment that he or she will actively participate in good faith in the development of the proposed regulations.

- The nominee's contact information, including address, phone number, and email address.

For a better understanding of the negotiated rulemaking process, nominees should review The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions at www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html prior to committing to serve as a negotiator.

Nominees will be notified whether or not they have been selected as negotiators as soon as the Department's review process is completed.

Schedule for Negotiations

The committee will meet for three sessions on the following dates:

Session 1: January 12-14, 2016

Session 2: February 17-19, 2016

Session 3: March 16-18, 2016

Sessions will run from 9 a.m. to 5 p.m.

The January and February committee meetings will be held at the U.S. Department of Education at:

1990 K Street, NW.

Eighth Floor Conference Center

Washington, DC 20006

The March committee meetings will be held at:

Union Center Plaza (UCP) Learning Center
830 First Street, NE., Lobby Level
Washington, DC 20002

The meetings are open to the public.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8013, Washington, DC 20006. Telephone: (202) 502-7526 or by email: Wendy.Macias@ed.gov.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the Federal Register by using the article search feature at: www.federalregister.gov. Specifically, through the

advanced search feature at this site, you can limit your search to documents published by the Department.

Delegation of Authority: The Secretary of Education has delegated authority to Jamienne S. Studley, Deputy Under Secretary, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Program Authority: 20 U.S.C. 1098a.

Dated: October 15, 2015

Jamienne S. Studley,
Deputy Under Secretary.

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